

REMARKS

Claims 36-57 and 71-72 are pending in the application, of which, claims 36 and 50 are independent. Claims 36, 41, 50 and 57 have been amended herein. Therefore, upon entry of the present amendment, claims 36-57 and 71-72 are subject to examination.

Claims 36-40, 44-45, 47, 50-51, 54-56, and 71 have been rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,810,884 to Kim (“Kim”). Claims 46 and 52-53 have been rejected under 35 USC 103(a) as being unpatentable over Kim. Independent claim 36 has been amended to require, *inter alia*, “a filament disposed through the first bore...configured to retract the bar against a distal lateral surface of the vessel and apply an internal compressive force upon the distal lateral surface of the vessel.” It is respectfully submitted that Kim does not disclose a filament disposed through a bore that retracts a bar against the distal lateral surface of a vessel. In Kim, the anchoring line 108, which holds membrane/plate anchor 100 in place against the vessel surface, is not disposed through thru hole 103. Rather, the anchoring line 108 is joined to attachment collar 104. *See Kim at Col. 16, line 60 – Col. 17, line 4; see also id. at Figs 9A and 9B.* In the Kim apparatus, thru hole 103 is for passage of a steering cable, not an anchoring line. *See id. at Col. 16, lines 60-64.* Applicant respectfully submits that Figure 24 does not show anchoring line 108 threaded through thru hole 103 so that it retracts to apply an internal compressive force on the vessel surface. Instead, Kim discloses that “anchor closure 100 has been threaded via the thru hole 103” to thread the anchor onto steering cable 14. *See id. at Col. 24, lines 35-38.*

With regard to claim 50, it is respectfully submitted that Kim does not disclose a filament disposed through an eyehole. Rather, the disclosure of Kim makes clear that anchor line 10 is *attached to* attachment collar 104 and does not go through the collar. *See Kim at Col. 16, line 64-66 (“Joined to the attachment collar 104 is an anchoring line 108 of predetermined length”) (emphasis added); see also id. at Col. 24, lines 42-43 (“The anchor line 108 is *extended from* the attachment collar 104...”)* (emphasis added). Figures 9A, 9B and 24 of Kim clearly show that anchor line 108 does not go through attachment collar 104, but is merely attached to the collar.

Accordingly, it is respectfully submitted that claims 36 and 50 are patentable over Kim. In addition, it is respectfully submitted that claims 37-40, 44-47 and 71, which depend directly or indirectly from independent claim 36, and claims 51-56, which depend directly or indirectly from independent claim 50, are allowable for at least the foregoing reasons.

Claims 36, 39-40, 44, and 71 have been rejected under 35 U.S.C. § 102(b) as being anticipated by Re. 36,974 to Bonutti (“Bonutti”). Independent claim 36 has been amended to require that “the bar is configured such that the filament may be retracted from within a patient’s body, thereby leaving the bar disposed within the body tissue.” The anchor disclosed in Bonutti is not left disposed within the patient. Rather, the Bonutti apparatus is specifically designed for removal of the anchor. *See* Bonutti at Col. 6, lines 33-35 (“The suture anchor 10 is easily removable from the bone 60 without causing trauma to the bone. FIGS. 11-16 illustrate sequentially the removal process”); *see id.* at Col. 6, lines 59-63 (“The anchor 10 and the pusher 84 are then removed distally from the bone as illustrated in FIGS. 15 and 16. This removal technique has been shown to work in 42 of 42 clinical trials”). Applicant respectfully submits that pulling the filament of the Bonutti apparatus as shown in Figure 20, for example, does not permit retraction of the filament to leave the anchor within the patient. Instead, the filament remains in the anchor, and pulling the filament causes changes in the orientation of the anchor. *See* Bonutti at Col. 7, lines 39-42 (“With this anchor construction, pulling on one or the other of the projecting suture ends causes cocking or rotation of the anchor to change its orientation between an insertion or release condition to a blocking condition”). Accordingly, it is respectfully submitted that Bonutti fails to disclose all of the elements of claim 36, and therefore, claim 36 and the claims that depend from claim 36, including claims 39-40, 44 and 71, are patentable over Bonutti.

Claims 50-51 and 57 have been rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,411,520 to Nash *et al.* (“Nash”). Nash does not disclose all of the limitations of independent claim 50 because it fails to disclose, *inter alia*, an eyelet. Rather, as shown in Figures 2-5 of Nash, the cylindrical opening 60 of plug member 130 extends through “hemispherical dome-like projection 54” which is “slightly flattened” at 54A. *See* Nash at Col. 8, lines 18-26. This is clearly a very different structure than the eyelet of the

present invention. Accordingly, it is respectfully submitted that claim 50 and the claims that depend from claim 50, including claims 51 and 57, are patentable over Nash.

Claims 36, 44, 48, and 71 have been rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,545,178 to Kensey *et al.* (“Kensey”). Claim 49 has been rejected under 35 U.S.C. § 103(a) as being unpatentable over Kensey in view of Rollero. As discussed above, independent claim 36 has been amended to require that the filament disposed through the bore be “configured to retract the bar against a distal lateral surface of the vessel and apply an internal compressive force upon the distal lateral surface of the vessel.” Kensey fails to disclose a filament retracted to retract a bar against the surface of a vessel. Rather, in Kensey it is withdrawal of the trocar that causes the anchoring member 38 to engage the peritoneal wall. Accordingly, it is respectfully submitted that claim 36 and the claims that depend from claim 36, including claims 44, 48, 49 and 71, are patentable over Kensey and over Kensey in view of Rollero.

Claims 41-43, 57, and 72 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Kim in view of Nash. Claims 41 and 57 have been amended to require, *inter alia*, that the “tensioning device provides an external compressive force upon the proximal lateral surface of the vessel during tensioning of the filament.” As the Examiner pointed out at page 8 of the October 30, 2007 Office Action, Kim fails to disclose a tensioning device configured to hold the filament in a tensioned state. It is respectfully submitted that Nash fails to disclose a tensioning device that provides an external compressive force on a proximal lateral surface of a vessel during tensioning of the filament. Rather, as shown in Figure 26 of Nash, the torsion spring 142 is on top of tamping member 130 and thus removed from the vessel such that it cannot provide an external compressive force on the proximal lateral surface of the vessel during tensioning. Applicant respectfully submits that it is not obvious for a tensioning device to provide an external compressive force on a proximal lateral surface of a vessel. Accordingly, it is respectfully submitted that claims 36 and 50 and the claims that depend from them, including claims 41-43, 57 and 72, are patentable over Kim in view of Nash.

Claims 41-43 and 72 have been rejected under 35 USC 103(a) as being unpatentable over Bonutti in view of Nash. As discussed above, independent claim 36 has been amended

to require that “the bar is configured such that the filament may be retracted from within a patient’s body, thereby leaving the bar disposed within the body tissue.” Bonutti does not disclose an apparatus wherein the filament may be retracted to leave a bar disposed within body tissue. Also, as discussed above, claim 41 has been amended to require, *inter alia*, that the “tensioning device provides an external compressive force upon the proximal lateral surface of the vessel during tensioning of the filament.” As the Examiner pointed out at page 9 of the October 30, 2007 Office Action, Bonutti fails to disclose a tensioning device configured to hold the filament in a tensioned state. It is respectfully submitted that Nash fails to disclose a tensioning device that provides an external compressive force on a proximal lateral surface of a vessel during tensioning of the filament. Rather, as shown in Figure 26 of Nash, the torsion spring 142 is on top of tamping member 130 and thus removed from the vessel such that it cannot provide an external compressive force on the proximal lateral surface of the vessel during tensioning. Applicant respectfully submits that it is not obvious for a tensioning device to provide an external compressive force on a proximal lateral surface of a vessel. Accordingly, it is respectfully submitted that claims 36 and 50 and the claims that depend from them, including claims 41-43 and 72, are patentable over Bonutti in view of Nash.

Claims 45-47 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Bonutti in view of U.S. Patent No. 6,506,197 to Rollero *et al.* (“Rollero”). As discussed above, independent claim 36 has been amended to require that “the bar is configured such that the filament may be retracted from within a patient’s body, thereby leaving the bar disposed within the body tissue.” Neither Bonutti nor Rollero discloses an apparatus wherein the filament may be retracted to leave a bar disposed within body tissue. Accordingly, it is respectfully submitted that claim 36 and the claims that depend from claim 36, including claims 45-47, are patentable over Bonutti in view of Rollero.

Conclusion

For at least the above-stated reasons, and in view of the foregoing amendments and remarks, Applicants respectfully requests that the Examiner reconsider and withdraw all outstanding rejections. Applicant believes that a full and complete reply has been made to the outstanding Office Action and respectfully solicits allowance of the present application. If necessary, the Commissioner is authorized in this and concurrent replies to charge payment (or credit any overpayment) to Deposit Account No. 50-2298 in the name of Luce, Forward, Hamilton & Scripps LLP, for any additional fees required under 37 CFR 1.16 or 1.17.

Dated: January 24, 2008

Respectfully submitted,

/Eric L. Lane/

Eric L. Lane
Reg. No. 56,399
Attorney for Applicants

LUCE, FORWARD,
HAMILTON & SCRIPPS, LLP
11988 El Camino Real, Suite 200
San Diego, California 92130
Tel: (858) 720-6300
Fax: (858) 720-6306

701011672.1